IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE K.M.JOSEPH

THURSDAY, THE 18TH OCTOBER 2007 / 26TH ASWINA 1929

WP(C).No. 28030 of 2007(J)

PETITIONER:

KORA ABRAHAM, AGED 65 YEARS,
S/O. LATE KORA, CHEROLIKKAL HOUSE,
PADINJATTINKARA P.O., KADAPLAMATTOM,
KOTTAYAM DISTRICT, PIN-686 571.

BY ADV. SRI.C.S.MANU
SRI.S.K.PREMRAJ
SRI.ANOOP JOSEPH
SRI.ANOOP.V.NAIR
SRI.ABHILASH AKBAR

RESPONDENTS:

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1. STATE OF KERALA, REPRESENTED BY
THE SECRETARY TO GOVERNMENT OF KERALA,
DEPARTMENT OF HOME, GOVERNMENT SECRETARIAT,
THIRUVANANTHAPURAM.

2. DISTRICT MAGISTRATE,
KOTTAYAM.

3. SUPERINTENDENT OF POLICE,
KOTTAYAM.

4. CIRCLE INSPECTOR OF POLICE,
KOTTAYAM EAST, KOTTAYAM.

5. SUB INSPECTOR OF POLICE,
AYIRKUNNAM POLICE STATION, KOTTAYAM.

6. SASIDHARAN NAIR,
POOVAKUZHY VEEDU, PARAMPUZHA,
THIRUVANCHOOR, KOTTAYAM.

7. HARI,
PANCHAYATH MEMBER, WARD NO.XV.

8. JIJI,
KRISHNA HOUSE, PARAMPUZHA, THIRUVANCHOOR,
KOTTAYAM.

9. THANKAMMA KESAVAN,
AMBALUVALEL HOUSE, THIRUVANCHOOR, KOTTAYAM.

10. K.B.SOBHANA,
IRUKAVALA VEEDU, THIRUVANCHOOR, KOTTAYAM.

11. VENU,
KUZHIYATTIL VEEDU, THIRUVANCHOOR, KOTTAYAM.

BY ADV. SRI.J.KRISHNAKUMAR
R1 TO R5 BY GOVERNMENT PLEADER SRI. P.K. RAVIKRISHNAN.

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 18/10/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

WPC. 28030/2007.

APPENDIX

PETITIONER'S EXTS:

EXT. P1 : TRUE COPY OF LICENSE BEARING NO.1/2007-08 DATED 9.4.2007 ISSUED BY THE ASSISTANT EXCISE COMMISSIONER, KOTTAYAM TO THE PETITIONER AND TWO OTHERS.

EXT. P2 : TRUE COPY OF FIR NO. 80/07 ON 13.5.2007 ON THE FILES OF THE AYIRKUNNAM POLICE STATION, KOTTAYAM ALLEGING OFFENCES UNDER SECTIONS 143, 147, 149, 323, 447 AND 427 OF THE INDIAN PENAL CODE.

EXT. P3 : TRUE COPY OF FIR NO.79/07 ON 13.5.2007 ON THE FILES OF THE AYIRKUNNAM POLICE STATION, KOTTAYAN FOR OFFENCES UNDER SECTIONS 323, 354, 294(d) AND 34 OF THE INDIAN PENAL CODE.

EXT. P4 : TRUE COPY OF THE JUDGMENT DATD 5.6.2007 IN W.P.(C) NO.15241/2007.

EXT. P5 : TRUE COPY OF THE ORDER DATED 22.6.2007 PASSED BY THE 2ND RESPONDENT.

EXT. P6 : TRUE COPY OF THE JUDGMENT DATED 18.7.2007 IN W.P.(C) NO.21317 OF 2007.

EXT. P7 : TRUE COPY OF THE ORDER BEARING NO. M-223525/07 DATED 10.9.2007 ISSUED BY THE 2ND RESPONDENT.

K.M.JOSEPH, J.

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WP.(C) No.28030 of 2007

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Dated this the 18th day of October, 2007

JUDGMENT

Petitioner has approached this court on the following brief allegations:

Petitioner is aggrieved by Ext.P7 order passed under Section 54 of the Abkari Act by the District Magistrate directing closure of the toddy shop run by the petitioner under Ext.P1 licence indefinitely. Ext.P1 is the licence. Petitioner paid rental of Rs.1,52,900/- for the year 2007-2008. Respondents 6 to 11 and their henchmen caused obstruction to the functioning of the shop, contends the petitioner. Exts.P2 and P3 are the copies of the FIR lodged. Thereafter petitioner approached this court seeking police protection culminating in Ext.P4 judgment. Therein it was observed that the complaint made to the Collector shall be considered and disposed of in accordance with law. It is also stated that the party respondents have the right to conduct dharna in peaceful manner, but they cannot take law into their hands and cannot cause physical obstruction to the running of the toddy

shop. It is stated that pursuant to the judgment no law and order situation has arisen. Thereafter there was no obstruction from the party respondents. The District Magistrate initiated steps and Ext.P5 order was passed. That came to be challenged in W.P.(C) 21317 of 2007 and by Ext.P6 judgment this court directed passing of final orders. Thereafter Ext.P7 order came to be passed by which the District Magistrate directed the shop to be kept closed for the sake of preservation of public peace in the area.

2. Counter affidavits are filed by the respondents. I heard learned counsel for the parties.

3. The only point raised by the petitioner is that Section 54 does not empower the District Magistrate to order the closure of the shop indefinitely. Section 54 reads as follows:

> "**54. Closing of shop for the sake of public peace:-** It shall be lawful for the District Magistrate by notice in writing to the licensee, to require that any shop in which liquor or any intoxicating drug is closed at such times or for such period as he may think necessary for the preservation of the public peace."

It is therefore his contention that meaning has attributed to the words 'such period' and it cannot be understood as superfluous. I feel that the matter has to be reconsidered by the second respondent.

Accordingly, the second respondent will consider the matter with opportunity of hearing to the petitioner or his representative and respondents 6 to 11 or their representatives. In order to facilitate an early hearing as the shop is remaining closed, there will be a further direction that the petitioner or his representative and respondents 6 to 11 or their representatives shall be present before the second respondent on 27.10.2007 at 11 a.m. The second respondent shall proceed to hear them and take a decision in the matter in accordance with law within a period of one week thereafter.

The writ petition is disposed of as above.

(K.M. JOSEPH, JUDGE)

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